

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN JOSE

CR 18 00172 BLF

HRL

FILED

APR 26 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES OF AMERICA,

V.

MICHAEL KAIL,

DEFENDANT(S).

INDICTMENT

18 U.S.C. §§ 1343, 1346 – Wire Fraud
18 U.S.C. §§ 1341, 1346 – Mail Fraud
18 U.S.C. § 1957 – Money Laundering
18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), and 28 U.S.C. § 2461(c) –
Criminal Forfeiture

A true bill.

Ch Oaks

Foreman

Filed in open court this 26 day of

April 2018

Clerk

Bail, \$

NO Bail Arrest Warrant

DOCUMENT NO.	CS 45
<i>10</i>	INITIALS
DISTRICT COURT CENTRAL CALIFORNIA	

SEALED BY ORDER
OF COURT

FILED

APR 26 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

ALEX G. TSE (CABN 152348)
Acting United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CR 18 00172 BLF

HRL

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL KAIL,

Defendant.

Criminal No.

VIOLATIONS: 18 U.S.C. §§ 1343, 1346 –
Wire Fraud; 18 U.S.C. §§ 1341, 1346 – Mail
Fraud; 18 U.S.C. § 1957 – Money Laundering;
18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), and 28
U.S.C. § 2461(c) – Criminal Forfeiture

(SAN JOSE VENUE)

UNDER SEAL

INDICTMENT

The Grand Jury charges:

INTRODUCTION

At all times relevant to this indictment, with all dates being approximate and all date ranges both approximate and inclusive:

1. Defendant MICHAEL D. KAIL (“KAIL”) was an individual living in Los Gatos, California. KAIL began working for Netflix, Inc. (“Netflix”) in 2011. From November 1, 2011, until his employment ended in August, 2014, KAIL held the title of Vice President of IT Operations. As an employee of Netflix, KAIL was assigned, and used, a Netflix email address.

2. Unix Mercenary, LLC, was a single-member company owned by KAIL. KAIL registered Unix Mercenary, LLC with the California Secretary of State on February 8, 2012.

1 3. Netflix was a company headquartered in Los Gatos, California.

2 4. From at least January 1, 2012, through December 31, 2014, Netflix email addresses
3 containing the domain “@netflix.com” were hosted by Google, Inc. through its Gmail service. During
4 that period, Netflix employees’ emails were hosted on computer servers located outside of the state of
5 California.

6 5. DocuSign, Inc., (“DocuSign”) was a company that provided electronic document signing
7 services for corporate and individual clients. DocuSign was headquartered in San Francisco, California.
8 From at least January 1, 2012, through December 31, 2014, servers hosting DocuSign’s customer
9 contracts and other customer data were located outside of the state of California.

10 6. Netenrich, Inc. (“Netenrich”), was a company headquartered in San Jose, California.
11 During 2012 through 2014, some Netenrich employees were contracted to work at Netflix.

12 7. VistaraIT, Inc. (“VistaraIT”), formerly VistaraIT, LLC, was a company headquartered in
13 San Jose, California. VistaraIT had the same business address as Netenrich, Inc.

14 8. Platfora, Inc. (“Platfora”), was a company located in San Mateo, California. Platfora was
15 founded in 2011.

16 9. Numerify, Inc. (“Numerify”), was a company located in Cupertino, California. Numerify
17 was founded in 2012.

18 10. Netskope, Inc. (“Netskope”), was a company located in Los Altos, California. Netskope
19 was founded in 2012.

20 11. Magainatics, Inc. (“Magainatics”), was a company located in Mountain View, California.
21 Maginatics was founded in 2010.

22 12. Sumo Logic, Inc. (“Sumo Logic”), was a company located in Redwood City, California.
23 Sumo Logic was founded in 2010.

24 13. CFTG, Inc., doing business as Docurated (“Docurated”), was a company located in New
25 York, New York. Docurated was founded in 2012.

26 14. ElasticBox, Inc. (“ElasticBox”), was a company located in San Francisco, California.
27 ElasticBox was founded in 2011.

28 15. In his role as Vice President of Internet Technology at Netflix, KAIL had authority to

1 enter into contracts with third parties on behalf of Netflix, and could approve payment of invoices by
2 Netflix, to third parties. KAIL had access to confidential company information of Netflix. KAIL also
3 had access to confidential information shared with Netflix by third parties, including bids from vendors.

4 THE SCHEME TO DEFRAUD

5 16. Beginning no later than February 29, 2012, and continuing through July 31, 2014, KAIL
6 did knowingly and with the intent to defraud devise and intend to devise a scheme and artifice to defraud
7 as to a material matter, to obtain money and property by means of materially false and fraudulent
8 pretenses, representations, promises, and omissions, and to deprive Netflix of its intangible right to
9 KAIL's honest services.

10 17. The gist of the scheme was that KAIL used his position as Vice President of Internet
11 Technology at Netflix to approve contracts with and payments to vendors, including Netenrich, Inc., and
12 VistaraIT, Inc. In return for these contracts and payments, Netenrich, VistaraIT, and others paid KAIL
13 kickbacks, including payments determined as a percentage of the business they did with Netflix. Certain
14 vendors to Netflix also awarded KAIL shares of stock and stock options in exchange for KAIL
15 approving contracts with Netflix.

16 18. KAIL, VistaraIT, and Netenrich used the terms "referral fees," "arrangement," "my
17 portion," and "invoice value" to hide the nature of the kickback payments.

18 19. It was further part of the scheme that KAIL registered Unix Mercenary, LLC, with the
19 California Secretary of State and opened bank accounts in that business's name for the purpose of
20 receiving kickback payments. KAIL used the kickback payments to pay for personals expenses.

21 20. It was further part of the scheme that KAIL directed communications to his home address
22 and a personal email address to avoid detection of the scheme by Netflix.

23 21. This scheme deprived Netflix of the following: (a) its money and property by enabling
24 the vendors to, among other things, negotiate more favorable contracts with Netflix than they would
25 have been able to obtain without the assistance of KAIL; and (b) its intangible right to KAIL's honest
26 services.

27 22. KAIL directed Netenrich and VistaraIT to pay kickbacks to a bank account in Unix
28 Mercenary's name, opened for the purpose of receiving the proceeds of the fraud scheme.

INDICTMENT,

UNITED STATES V. MICHAEL KAIL

23. KAIL directed Netenrich, Platfora, Netskope, Numerify, Maginatics, Sumo Logic, Docurated, and Elasticbox to pay him kickbacks in the form of stock options in exchange for KAIL approving contracts for those companies to provide services to Netflix.

24. As part of the scheme to defraud Netflix, KAIL engaged in conduct and made material false representations, promises, and omissions, including, but not limited to, the following:

- a. KAIL concealed from Netflix that he made arrangements with vendors and prospective vendors to make kickback payments of cash and stock options to KAIL in exchange for KAIL approving contracts and invoices between Netflix and those vendors;
- b. KAIL's advisory agreements with vendors to Netflix falsely affirmed that he had no conflicts of interest preventing him from acting as an advisor to such companies;
- c. KAIL directed that payments be sent to his personal address. When KAIL received communications from Netflix suppliers by email about payments or stock options that had been granted to him, he instructed suppliers to send future correspondence to his private email address. KAIL also met with individuals to discuss compensation at locations away from Netflix's Los Gatos, California headquarters;
- d. When questioned about the purpose and accounting of some VistaraIT invoices, KAIL misrepresented to other Netflix employees the services provided under the invoices; and
- e. When questioned by Netflix's Chief Executive Officer about conflicts of interest, KAIL falsely denied that he was receiving compensation from vendors to Netflix.

USE OF WIRES AND MAILINGS

25. KAIL used email communications to carry out an essential part of the scheme to defraud by signing and transmitting contracts electronically using the DocuSign service. KAIL also used email communications through his personal email account and his netflix.com email account, both hosted by Google, to carry out an essential part of the scheme to defraud. KAIL did so by negotiating, calculating, requesting, and discussing his kickbacks from Netenrich, VistaraIT, and other companies listed in Counts One through Nineteen, below.

26. Kail used and directed others to use United States Mail and Federal Express to send executed advisory agreements and stock options paperwork to and from the companies listed in Counts Twenty through Twenty-Two, below.

COUNTS ONE THROUGH NINETEEN: (18 U.S.C. §§ 1343 and 1346 – Wire Fraud)

27. The factual allegations at Paragraphs One through Twenty-Six are realleged and incorporated herein.

28. On or about the dates alleged below, in the Northern District of California and elsewhere, the defendant,

MICHAEL KAIL,

having knowingly and intentionally devised a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, for the purpose of executing such a scheme and artifice and attempting to do so, did knowingly cause to be transmitted, by means of wire communications in interstate and foreign commerce, specifically the interstate wires described in the table immediately below, each communication being a separate count of this Indictment:

COUNT	DATE	DESCRIPTION
1	4/6/2013	Transmission via DocuSign of signed Netskope, Inc. 2012 Stock Incentive Plan Stock Option Agreement
2	7/9/2014	Transmission via DocuSign of Netskope, Inc. Order Form
3	7/10/2014	Transmission via DocuSign of Netskope, Inc. End User License Agreement
4	4/30/2013	Transmission via DocuSign of Maginatics, Inc. Advisory Board Agreement
5	5/30/2013	Transmission via DocuSign of Docurated, Inc. Terms of Agreement
6	6/3/2013	Transmission via DocuSign of Docurated, Inc. Strategic Advisor Agreement
7	1/3/2014	Transmission via DocuSign of Docurated, Inc. Amendment to Strategic Advisor Agreement
8	3/21/2014	Transmission via DocuSign of Docurated, Inc. Terms of Agreement
9	6/15/2013	Transmission via DocuSign of Elasticbox, Inc. Order Form
10	6/17/2013	Transmission via DocuSign of Elasticbox, Inc. Master Services Agreement
11	11/27/2013	Transmission via DocuSign of Elasticbox, Inc. Order Form

COUNT	DATE	DESCRIPTION
12	7/12/2013	Transmission via DocuSign of Sumo Logic, Inc. Netflix Sumologic Renewal Order Form
13	8/2/2013	Transmission via DocuSign of Platfora, Inc. Advisory Board Agreement
14	8/22/2013	Transmission via DocuSign of Platfora, Inc. Amendment One To Evaluation Agreement
15	9/19/2013	Transmission via DocuSign of Platfora, Inc. Software Subscription License Agreement
16	3/25/2014	Transmission via email, "Fwd: sunshine" to Netflix CEO
17	2/3/2014	Transmission via DocuSign of VistaraIT Order Form
18	2/3/2014	Transmission via DocuSign of signed Numerify, Inc. Advisor Agreement
19	2/21/2014	Transmission via DocuSign of signed Numerify, Inc. Master Subscription Agreement

Each in violation of Title 18, United States Code, Sections 1343 and 1346.

COUNTS TWENTY THROUGH TWENTY-TWO: (18 U.S.C. §§ 1341 and 1346 – Mail Fraud)

29. The factual allegations at Paragraphs One through Twenty-Six are realleged and incorporated herein.

30. On or about the dates alleged below, in the Northern District of California and elsewhere, the defendant,

MICHAEL KAIL,

having knowingly and intentionally devised a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, for the purpose of executing such a scheme and artifice and attempting to do so, did knowingly cause to be sent through the United States Postal Service and private and commercial interstate carriers the following matters, each mailing being a separate count of this Indictment:

COUNT	DATE	DESCRIPTION
20	5/15/2013	Letter via Certified U.S. Mail from KAIL to Internal Revenue Service re: Election Under Section 83(b) of the Internal Revenue Code for 30,000 shares of Maginatics, Inc. stock
21	6/14/2013	Federal Express mailing of DocuSign Advisory Board paperwork
22	3/14/2014	Federal Express mailing of commission checks from Netenrich, Inc. and VistaraIT, Inc.

Each in violation of Title 18, United States Code, Sections 1341 and 1346.

INDICTMENT,

UNITED STATES V. MICHAEL KAIL

COUNTS TWENTY-THREE THROUGH TWENTY-NINE: (18 U.S.C. § 1957 – Money Laundering)

31. The factual allegations contained in Paragraphs One through Twenty-Six are realleged and incorporated herein.

32. On or about the dates alleged below, in the Northern District of California and elsewhere, the defendant,

MICHAEL KAIL,

did knowingly engage and attempt to engage in the following monetary transactions by, through, or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, transferring funds from a bank account in the name of Unix Mercenary, LLC to himself and to an escrow company for the purchase of his residence, which were received in the form of bribes and kickbacks from Netenrich, VistaraIT, and Netskope, related to Wire Fraud, in violation of Title 18, United States Code, Sections 1343 and 1346, as alleged in Counts One through Three and Eighteen, and Mail Fraud, in violation of Title 18, United States Code, Sections 1341 and 1346, as alleged in Count Twenty-Two:

COUNT	DATE	DESCRIPTION
23	4/23/2013	Transfer of \$25,422 from Unix Mercenary Wells Fargo Bank checking account #3152 to Kail TD Ameritrade account
24	7/18/2013	Wire \$70,000 from Unix Mercenary Silicon Valley Bank checking account #2308 to First American Title Company
25	9/3/2013	Transfer \$60,000 from Unix Mercenary Silicon Valley Bank checking account #2308 to Kail Silicon Valley Bank savings account #2285
26	9/3/2013	Transfer of \$25,000 from Unix Mercenary Silicon Valley Bank checking account #6623 to Kail Joint Silicon Valley Checking Account
27	10/8/2013	Transfer \$30,000 from Unix Mercenary Silicon Valley Bank checking account #2308 to Kail Silicon Valley Bank savings account #2285
28	9/22/2014	Transfer \$11,000 from Unix Mercenary Silicon Valley Bank checking account #2308 to Kail Silicon Valley Bank joint checking account #6619
29	10/24/2014	Transfer \$25,000 from Unix Mercenary Silicon Valley Bank checking account #2308 to Kail Silicon Valley Bank savings account #2285

Each in violation of Title 18, United States Code, Section 1957.

FORFEITURE ALLEGATION: (18 U.S.C. §§ 981(a)(1)(C), 982(a)(1); 28 U.S.C. § 2461(c))

33. The factual allegations contained in Counts One through Twenty-Two are hereby realleged for the purpose of alleging forfeiture to the United States of America pursuant to Title 18,

INDICTMENT,

UNITED STATES V. MICHAEL KAIL

1 United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2 34. Upon conviction of any of the offenses in violation of Title 18, United States Code,
3 Sections 1341 or 1343 set forth in Counts One through Twenty-Two of this Indictment, or any of them,
4 the defendant,

5 MICHAEL KAIL,

6 shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section
7 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which
8 constitutes or is derived from proceeds traceable to the offenses, including but not limited to the sum of
9 money equal to the total amount of proceeds defendant obtained or derived from, directly or indirectly,
10 from the violation.

11 35. The factual allegations contained in Counts Twenty-Three through Twenty-Nine are
12 hereby realleged for the purpose of alleging forfeiture to the United States of America pursuant to Title
13 18, United States Code, Section 982(a)(1).

14 36. Upon conviction of any of the offenses in violation of Title 18, United States Code,
15 Section 1957 set forth in Counts Twenty-Three through Twenty-Nine of this Indictment, or any of them,
16 the defendant,

17 MICHAEL KAIL,

18 shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(1)
19 any property, real or personal, involved in such offense, including but not limited to the real property
20 and improvements at 234 Almendra Drive, Los Gatos, California 95030.

21 37. If any of the property described above, as a result of any act or omission of the defendant:
22 a. cannot be located upon the exercise of due diligence;
23 b. cannot be located upon the exercise of due diligence;
24 c. has been transferred or sold to, or deposited with, a third party;
25 d. has been placed beyond the jurisdiction of the court;
26 e. has been substantially diminished in value; or
27 f. has been commingled with other property which cannot be divided without difficulty;
28 the United States of America shall be entitled to forfeiture of substitute property pursuant to Title

INDICTMENT,

UNITED STATES V. MICHAEL KAIL

21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18 United States Code, Sections 981(a)(1)(C), 982(a)(1), Title 28 United States Code, Section 2461(c), and Federal Rule of Criminal Procedure 32.2.

SENTENCING ALLEGATIONS

38. With respect to the charges in this Indictment, for the purposes of determining the maximum alternative fine, pursuant to Title 18, United States Code, Section 3571(d), the defendant, MICHAEL KAIL, derived gross gains of approximately \$690,000, and the victim suffered losses of at least approximately \$716,000.

DATED: April 26, 2018 A TRUE BILL
Ch Oaks
FOREPERSON

ALEX G. TSE
Acting United States Attorney

Barbara Valliere
BARBARA J. VALLIERE
Chief, Criminal Division

Approved as to Form:

Colin Sampson
COLIN SAMPSON
Assistant United States Attorney

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

18 U.S.C. §§ 1343, 1346 – Wire Fraud ☐ Petty
 18 U.S.C. §§ 1341, 1346 – Mail Fraud ☐ Minor
 18 U.S.C. § 1957 – Money Laundering ☐ Misdemeanor
 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), and 28 U.S.C. § 2461(c) – Criminal Forfeiture ☒ Felony

PENALTY: 18 U.S.C. §§ 1343, 1346 – 20 yrs prison, \$1,000,000 fine, 3 yrs supervised release, \$100 special assessment; 18 U.S.C. §§ 1341, 1346 – 20 yrs prison, \$1,000,000 fine, 3 yrs supervised release, \$100 special assessment; 18 U.S.C. § 1957 – 10 yrs prison, \$250,000 fine, 3 yrs supervised release, \$100 special assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DEFENDANT - U.S.

▶ MICHAEL KAIL

DISTRICT COURT NUMBER

FILED
APR 26 2018
CLERK SUSAN Y. SOONG
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

DEFENDANT

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

1) ☒ If not detained give date any prior summons was served on above charges ▶

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction

☐ Federal ☐ State

6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☒ No

If "Yes" give date filed

DATE OF ARREST ▶

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ▶

Month/Day/Year

☐ This report amends AO 257 previously submitted

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FEDERAL BUREAU OF INVESTIGATION

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form ALEX G. TSE

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) Colin Sampson, AUSA

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT

Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

234 Almendra Dr., Los Gatos, CA

Date/Time: _____

Before Judge: _____

Comments:

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment